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TELECOMMUNICATION COVER PAGE

DATE: July 9, 2004

TO: Commissioner for Patents
P.O. Box 1450
Special Programs Examiner
Technology Center 3600
Alexandria, Virginia 22313-1450

FACSIMILE NO.: 1-703-305-7687

ATTENTION: Special Programs Director
Technology Center 3600

Technology Center: 3635

SERIAL NO.: 10/772,485

FILED: February 5, 2004

APPLICANT: Thomas A. JESKO

ATTORNEY DOCKET NO.: WBA.P.3115 A

FROM: Joseph G. Curatolo, Esq.
Salvatore A. Sidoti, Esq.

TOTAL NUMBER OF PAGES INCLUDING COVER PAGE: 12

COMMENTS:

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Thomas A. JESKO Docket No.: WBA.P.3115 A
Serial No: 10/772,485 Examiner: Yvonne Horton
Filed: February 5, 2004 Group Art Unit: 3635
For: COVER ASSEMBLY FOR STRUCTURAL MEMBERS

COMMISSIONER FOR PATENTS
P.O. BOX 1450
SPECIAL PROGRAMS EXAMINER
TECHNOLOGY CENTER 3600
ALEXANDRIA, VIRGINIA 22313-1450

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Laura A. Pasa
(type or print name of person signing paper)

Laura A. Pasa
(signature of person faxing paper)

7-9-04
(date)

TRANSMITTAL SHEETEnclosed is:

Transmittal Sheet with Certificate of Facsimile Transmission and Authorization to Charge
Deposit Account (1 page - in duplicate)
Petition to Make Special Because of Actual Infringement (2 pages - in duplicate)
Statement in Support of Petition to Make Special Because of Actual Infringement (4 pages - in
duplicate)

Respectfully submitted,

Salvatore A. Sidoti

Joseph G. Curatolo, Esq. (Reg. No. 28,837)
Salvatore A. Sidoti, Esq. (Reg. No. 43,921)
Renner, Kenner, Greive, Bobak, Taylor & Weber
24500 Center Ridge Road, Suite 280
Westlake, OH 44145
Telephone: (440) 808-0011
Facsimile: (440) 808-0657
Attorney for Applicant

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Laura A. Rafn
(signature of person faxing paper)

7-9-04
(date)

PETITION TO MAKE SPECIAL BECAUSE OF ACTUAL INFRINGEMENT(37 C.F.R. §1.102 and MPEP §708.02)

Dear Sir:

Applicant hereby respectfully petitions to make the present application special, because of actual infringement.

1. Accompanying Material.

Accompanying this Petition is a Statement by Attorney in Support of the Petition to Make Special Because of Actual Infringement.

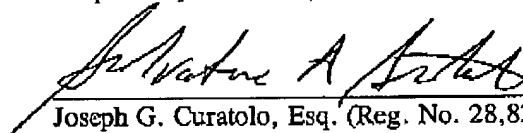
2. **Petition Fee (37 C.F.R §1.17(i)).**

The Commissioner is hereby authorized to charge the petition fee of \$130.00 to Deposit Account No. 18-0987, referencing Attorney Docket No. WBA.P.3115 A.

The Commissioner is also hereby authorized to charge any additional fees which might be required to effect the filing of this (these) document(s), or credit any overpayment to Account No. 18-0987, referencing Attorney Docket No. WBA.P.3115 A. This authorization is being submitted in duplicate.

Applicant respectfully requests that the Office confirm receipt of the present Petition to Make Special by return facsimile to 440-808-0657. Should the Office have any questions, the undersigned attorney would welcome a telephone call.

Respectfully submitted,



Joseph G. Curatolo, Esq. (Reg. No. 28,837)

Salvatore A. Sidoti, Esq. (Reg. No. 43,921)

Renner, Kenner, Greive, Bobak, Taylor & Weber

24500 Center Ridge Road, Suite 280

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Telephone: (440) 808-0011

Attorney for Applicant

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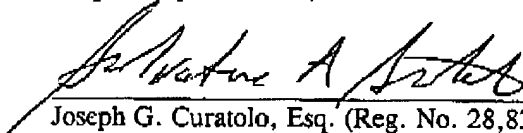
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Laura A. Rein
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Laura A. Rein
(signature of person faxing paper)

7-9-04
(date)

STATEMENT IN SUPPORT OF PETITION TO MAKE SPECIAL
BECAUSE OF ACTUAL INFRINGEMENT
(37 C.F.R. §1.102 and MPEP §708.02)

Dear Sir:

I,

Name: Salvatore A. Sidoti, Esq. (Registration No. 43,921)
Address: Renner, Kenner, Greive, Bobak, Taylor & Weber
24500 Center Ridge Road, Suite 280
Westlake, Ohio 44145
Telephone: (440) 808-0011
Facsimile: (440) 808-0657

am

- ☐ the Applicant
☐ the Assignee
☒ one of the Attorneys of record for this application and make the following statements:

A. There is a currently infringing device actually on the market.

The alleged infringing device is currently on the market. That is, the alleged infringing device is currently being offered for sale on the market. The alleged infringing device includes an elongated, flexible, resilient cover having a load bearing surface and a support surface that is opposite the load bearing surface. The cover also includes marginal support areas along opposite lateral edges thereof. The cover further includes a thickness and an elasticity to elastically deform to establish supporting contact between the marginal support areas of the cover and the underlying horizontal structural members

The alleged infringing device also includes a rigid plate member that is adapted to bridge a gap between two horizontal structural members. The rigid plate is encapsulated within the elongated resilient cover.

The alleged infringing device is being offered for sale as an expansion joint cover assembly for bridging a gap between spaced apart concrete structural members.

The alleged infringing device further includes a plurality of fasteners that are engaged with the elongated, resilient cover at spaced sites on at least one lateral side portion of the elongated, resilient cover for elastically anchoring the elongated, flexible, resilient cover to at least one of the horizontal structural members. The alleged infringing device was first discovered on June 16, 2004.

B. Rigid Comparison of Alleged Infringing Device with Claims.

A rigid comparison of the alleged infringing

- ☒ device
- ☐ product
- ☐ method

with the claims of the present application has been made. In my opinion, at least some of the claims, without limitation, for example, at least claims 1-7, 16-22, 31-37, and 46, on file in the present application are unquestionably infringed.

C. Prior Art Search.

I,

- ☒ have made a search of
- ☐ have caused to be made a search of, and
- ☒ have a good knowledge of

the pertinent prior art. All such prior art is provided to the Office as

- ☒ having been previously filed
- ☐ being supplemented
- ☐ being filed

in an Information Disclosure Statement.

I believe that all of the claims in this application

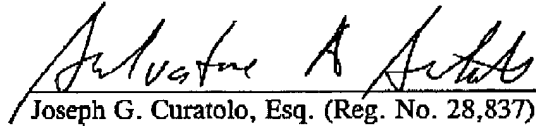
- ☒ as on file
- ☐ as on file resulting from the attached amendment

are allowable.

The Commissioner is also hereby authorized to charge any additional fees which might be required to effect the filing of this (these) document(s), or credit any overpayment to Account No. 18-0987, referencing Attorney Docket No. WBA.P.3115 A. This authorization is being submitted in duplicate.

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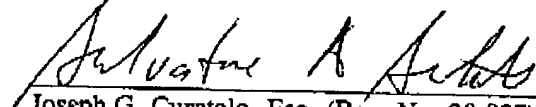
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